

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

Sensa Verogna, Plaintiff,	)	
v.	)	Case #: <b>1:20-cv-00536-SM</b>
Twitter Inc., Defendant.	)	

---

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S REPLY TO  
TWITTER, INC.’S OBJECTION TO PLAINTIFFS MOTION TO STRIKE TWITTERS  
MOTION TO DISMISS**

1. In this case, because Defendants' counsel had NOT been admitted to practice before this Court, Defendant's Motion and Memorandum ["Doc. 3"] are not properly before this Court, and therefore, should be stricken. Attorney Schwartz's act of submitting a motion before this Court certainly constitutes "the unauthorized practice of law." Attorney Schwartz violated New Hampshire's State prohibition against the unauthorized practice of law, NH RSA 311:7. See arguments, [Doc. 14].

2. As of June 1, 2020 neither Attorneys Eck or Schwarz had motioned the Court for a limited appearance under Local Rule 83.7, neither attorney had taken any preliminary steps towards being granting pro hac vice status for Attorney Schwartz, as neither attorney had motioned the Court for Pro Hac Vice to comply with Local Rule 83.2(b), nor had the Court decided on pro hac vice motion of Attorney Schwartz because there were none on record on or before June 1, 2020. Attorneys Eck or Schwarz also failed to file an affidavit with the Court to comply with Local Rule 83.2(b)(1) and did not pay any fee for admission as required by Local Rule 83.2(b)(1), nor had Attorney Schwartz complied with Local Rule N.H. Rule 5.5(c)(3) in performing services (submitting pleadings or answers to the Court) for which the forum requires pro hac vice

admission. The District Court rules regulating the practice of law, including admission *pro hac vice*, are mandatory and must be followed.

3. As of June 1, 2020 when Attorney Schwartz submitted Doc. 3 to the Court, she violated N.H. RSA 311:7 by practicing as an Attorney in Court, because she had not been admitted by the Court nor had she take the oath prescribed in N. H. RSA 311:6. Because of its illegality and because if Stricken it would be non-existent, Doc. 3 would therefore be non-conforming under Fed.R.Civ.P. 12(f). "There exists, in New Hampshire, a strong public policy against the unauthorized practice of law." *State v. Settle*, 124 N.H. 832, 835 (1984) (citing *Bilodeau v. Antal*, 123 N.H. 39, 43 (1983)). See *Kamasinski v Fitzgerald, et al.* United States District Court of New Hampshire, CV-03-205-M (2003) (enjoined by the Court for engaging in the unauthorized practice of law for filing an appearance on behalf of any litigant in a state court or state administrative proceeding and defining unauthorized practice of law as; [The] representation of another entity or person(s) in a court, or in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.)

4. The Plaintiff is warranted a default and judgment by the Clerk [Docs. 7, 8], and continues to oppose Attorney Julie E. Schwartz's admission *pro hac vice* [Doc. 12], Plaintiff's argument for striking Defendant's Doc. 3, is that Attorney Schwartz "appeared" AND "presented" Defendant's motion and Memorandum illegally [Doc. 14 @ 19] and [Doc. 14-1, at 4, 5 and 28.], and that Doc. 3 is "scandalous," [Doc. 14, ¶ 1] "illegal," [*Id.*, ¶ 4], "detract[ion] from the dignity of the court," [*Id.*] and "prejudicial" to the Plaintiff[*Id.*, ¶ 7.]

5. Attorney Eck's signature on the Doc. 3 does not change the fact that the motion was presented by and on behalf of the Defendant Corporation by an Attorney was not authorized

53 to practice law before this Court. Attorney Schwartz's absence of her signature is moot, as she  
 54 still "presented" Doc. 3 to the Court by including her name onto the document while advocating  
 55 and representing Twitter the Defendant in a responsive pleading before the Court.

56 6. Pertinent here, N.H. Rule 5.5 in *full* context is;

57 5.5(a) "A lawyer shall not practice law in a jurisdiction in violation of the regulation  
 58 of the legal profession in that jurisdiction, or assist another in doing so."

59 5.5(c) "A lawyer admitted in another United States jurisdiction.. may provide legal  
 60 services on a temporary basis in this jurisdiction that...(1) are undertaken in association with a  
 61 lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;  
 62 AND (2) are in.. a... proceeding before a tribunal in this or another jurisdiction, if the lawyer, or  
 63 a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or  
 64 reasonably expects to be so authorized; AND (3) are in or reasonably related to a pending or  
 65 potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another  
 66 jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a  
 67 jurisdiction in which the lawyer is admitted to practice and are not services for which the forum  
 68 requires pro hac vice admission; OR (4) are not within paragraphs (c)(2) or (c)(3) and arise out of  
 69 or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted  
 70 to practice.

71 7. Therefore, under N.H. Rule 5.5, an out of State Attorney.... in good standing...  
 72 may provide services.. which do not require pro hac vice admission. Therefore, submitting and  
 73 appearing before the court by an Attorney who had not been granted pro hac vice status prior to  
 74 the filing is practicing the "unauthorized practice of law" under N.H. RSA 311:7.

75           8.       Black's Law Dictionary, defines "[a]pppearance by attorney" as "[a]n act of an  
76 attorney in prosecuting an action on behalf of his cli-ent. Document filed in court in which attorney  
77 sets forth fact that he is representing a party to the action." Post, at 40 (quot-ing Black's Law  
78 Dictionary 97 (6th ed. 1990)).

79           9.       The act of appearing in court to assert or defend claims on behalf of another lies at  
80 the very heart of the practice of law. See § 484.010.1, RSMo 2000 (the practice of law includes  
81 the "appearance as an advocate in a representative capacity ... in connection with proceedings  
82 pending or prospective before any court of record").

83           10.      Even though this Court is the "sole arbiter" of what constitutes the practice of law,  
84 it "has used these statutory definitions ... as a reference point for determining the scope of the  
85 practice of law." Hargis v. JLB Corp., 357 S.W.3d 574, 578 (Mo. banc 2011).

86           11.      The Local Rules of Practice of the United States District Court for the District of  
87 Nevada, which are similar to New Hampshire's Local Rules, require that in order to be eligible to  
88 practice before the District Court, an attorney must be admitted to practice before the Supreme  
89 Court of Nevada or, if the attorney is appearing pro hac vice, that he or she be a member in good  
90 standing and eligible to practice before the bar of any jurisdiction in the United States ... [; and (2)]  
91 Nevada Revised Statute (NRS) 7.285[, which] makes it unlawful for a person to practice law in  
92 Nevada if the person is not an active member of the State Bar of Nevada or otherwise authorized  
93 to practice law in Nevada. See D. Nev. L.R. IA 10-1, 10-2; Nev. Rev. Stat. § 7.285.[2] United  
94 States v. Kimsey 668 F.3d 691, 9th Cir. (2012).

95           12.      "[A] district court can only depart from the strictures of its own local procedural  
96 rules where "it has a sound rationale for doing so". United States v. Eleven Vehicles, Their Equip.  
97 & Accessories, 200 F.3d 203, 215 (3d Cir. 2000). Wehmer, 591 F.3d 666, 669 (3d Cir. 2010)

(Rule 59); *Budget Blinds, Inc. v. White*, 536 F.3d 244, 251 (3d Cir. 2008) (Rule 60). “[A] court abuses its discretion when its ruling is founded on an error of law or a misapplication of law to the facts.” *Montrose Med. Grp. Participating Sav. Plan v. Bulger*, 243 F.3d 773, 780 (3d Cir. 2001) (quotation marks and citation omitted). Although judges should be independent, they must comply with the law and should comply with this Code. Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary. Codes Canon 1 (“A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved.”) *Boehner, John A. v. McDermott, James A.* (D.C. Cir. 2007) That action does not speak to the judicial fairness required of all judges under Canons 1 and 2 of the Code of Conduct for United States Judges. See *Moran v. Clarke*, 309 F.3d 516, 518 (8th Cir. 2002) (en banc) (per curiam) (referring to the “solemn obligation” of every federal judge “to not only uphold the integrity of the judiciary, but also to act always in a manner that promotes public confidence in the integrity and impartiality of the judiciary”). *United States v. Aaron Webster* 484 F.3d 573 (8th Cir. 2016). Unbiased, impartial adjudicators are the cornerstone of any system of justice worthy of the label. And because “[d]eference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges,” jurists must avoid even the appearance of partiality. *United States v. Microsoft Corp.*, 253 F.3d 34, 115 (D.C. Cir. 2001) (quoting Code of Conduct for United States Judges, Canon 1 cmt. (2000)). “Such a stringent rule,” to be sure, “may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.” *In re Murchison*, 349 U.S. 133, 136 (1955). But “to perform its high function in the best way,” the Supreme Court has emphasized, “justice must satisfy the

appearance of justice.” *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988) (quoting *In re Murchison*, 349 U.S. at 136).

13. Faithfulness to the rule of law allows us to live in a civil society in which everyone’s rights are respected; where each of us is guaranteed liberty and equality of opportunity. As citizens we respect the laws because they are clearly communicated and fairly enforced. Everyone is held accountable to the same laws, and those laws protect our fundamental rights. This is the foundation of the rule of law in the United States. In the United States, we have written laws in place to help us settle disagreements peacefully through a fair system of justice. It is the job of the courts to interpret the laws. It is up to judges and juries to decide if we have indeed broken the law. Chief Justice Rehnquist called judicial independence “one of the crown jewels of our system of government today.” the Framers enshrined in the federal Constitution: whether elected or appointed, a judge must be responsive only to the laws, to judicial precedents, and to federal and state constitutions. <https://www.americanbar.org/groups/litigation/initiatives/committee-on-american-judicial-system/in-the-news/threats-to-judicial-independence-and-rule-of-law/>

14. Many Courts have voided the filings of an out-of-state attorney who did not secure pro hac vice admission by the Court prior to submitting filings, answers or arguments to the Court. See, e.g., *Carlson v. Workforce Safety & Ins.*, 765 N.W.2d 691 (Neb. 2009) (filing of a motion for reconsideration before an administrative agency by an out-of-state lawyer who did not secure pro hac vice admission within the time required by court rule was treated as a nullity); “When our rules for the unauthorized practice of law and for pro hac vice admission are construed together in the context of proceedings before WSI and the requirement that a corporation may not be represented by a non-attorney agent in a legal proceeding, we conclude GMR’s nonresident attorneys’ activities in making a request for reconsideration, filing a legal brief, and being designated as counsel in the



WSI proceeding were not protected by the safe harbor provisions of N.D.R. Prof. Conduct 5.5(b). GMR's nonresident attorneys were required to file a motion for pro hac vice admission under Admission to Practice R. 3(A) within 45 days of their appearance in this agency proceeding. Because GMR's nonresident attorneys failed to timely comply with the requirements for pro hac vice admission, we conclude GMR's request for reconsideration by its non-attorney agents was void. See Wetzel, 2005 ND 190, ¶¶ 12-13, 705 N.W.2d 836; Strong, 23 S.W.3d at 241-42. See also Mitchell v. Progressive Ins. Co., 965 So. 2d 679 (Miss. 2007) (filing of complaint by out-of-state lawyer who had not secured pro hac vice status was a nullity and its filing did not toll the statute or limitations); Preston v. Univ. of Ark. for Med. Scis., 128 S.W.3d 430 (Ark. 2003) (same). The clear intent of Rule XIV is that the written statement be submitted before the attorneys engage in the practice of law in Arkansas. Where a party not licensed to practice law in this state attempts to represent the interests of others by submitting himself or herself to jurisdiction of a court, those actions such as the filing of pleadings, are rendered a nullity. See also, Davenport v. Lee, 348 Ark. 148, 72 S.W.3d 85 (2002) Davenport, 348 Ark. at 164, 72 S.W.3d at 94. We further concluded that "the original complaint, as a nullity never existed, and thus, an amended complaint cannot relate back to something that never existed, nor can a nonexistent complaint be corrected." Id. We hold that the same is true for the case before us. The Davenport case governs our decision, and the Prestons' complaint is a nullity. See, e.g., In re Jackman, 761 A.2d 1103 (N.J. 2000) (lawyer denied admission to the bar for a period of time due to previous unlicensed practice in the state). See, e.g., Palmore v. City of Pac., 393 S.W.3d 657, 664 (Mo. App. 2013) (because "application for trial de novo was not filed by an attorney, its application was void ab initio"); 6226 Northwood Condo. Ass'n v. Dwyer, 330 S.W.3d 504, 506 (Mo. App. 2010) ("where a representative engages in the unauthorized practice of law, the proper remedy is to dismiss the cause or treat the actions

taken by the representative as a nullity”) *Schenberg v. Bitzmart, Inc.*, 178 S.W.3d 543, 544 (Mo. App. 2005) (“normal effect of a representative’s unauthorized practice of law is to dismiss the cause or treat the particular actions taken by the representative as a nullity”); *Joseph Sansone Co. v. Bay View Golf Course*, 97 S.W.3d 531, 532 (Mo. App. 2003) (“action taken on behalf of a corporation by a non-attorney representative may be void and can result in dismissal”); *Strong v. Gilster Mary Lee Corp.*, 23 S.W.3d 234, 241 (Mo. App. 2000) (filings “by a person unauthorized to practice law are a ‘nullity,’ and hence may properly be dismissed”); *Sellers By & Through Booth v. Denney*, 945 S.W.2d 63, 66 (Mo. App. 1997) (because an unlicensed individual may not represent another person in court, “the notice of appeal and brief ... are nullities”); *Stamatiou v. El Greco Studios, Inc.*, 935 S.W.2d 701, 702 (Mo. App. 1996) (pleading filed by corporate officer who was not a licensed attorney “was not properly before the circuit court ... and the circuit court should have dismissed it without considering its allegations”); *Risbeck v. Bond*, 885 S.W.2d 749, 750 (Mo. App. 1994) (where corporation was “represented by a person unauthorized to do so, the trial court properly dismissed the petition”); *Show-Me Restoration Servs. v. Harlan*, 778 S.W.2d 350, 351 (Mo. App. 1989) (papers stricken because “filed by plaintiff’s vice president and co-owner [who is] not an attorney”).

15. In this case, because Defendants' counsel had NOT been admitted to practice before this Court, Defendant’s Motion and Memorandum [“Doc. 3”] are not properly before this Court, and therefore, should be stricken. Attorney Schwartz’s act of submitting a motion before this Court certainly constitutes “the practice of law.” And because Attorney Schwartz violated New Hampshire’s State prohibition against the unauthorized practice of law, NH RSA 311:7, violated Local Rule 83.1 [Doc 14. @ 16], Local Rule 83.7, [Doc. 14. @ 17], Doc. 3 is non-conforming under Fed.R.Civ.P. 12(f), by bringing a motion despite the fact that she is not admitted to practice



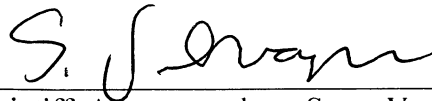
189 before this Court, and this Court should hold that Defendant's Motion and Memorandum [Doc. 3],  
 190 be stricken from the record. [Doc. 14 @ 28]. *Spanos v. Skouras Theatres Corp.*, 364 F.2d 161, 165  
 191 (2d Cir.1965) (Attorney had not been admitted to practice before this Court pro hac vice, *id.* at  
 192 167), ("unlawful practice includes counseling as well as court appearances.... [a]nd it extends to  
 193 advice involving federal law as well as New York law....") (citations omitted), cert. denied, 385  
 194 U.S. 987, 87 S. Ct. 597, 17 L. Ed. 2d 448 (1966); *In re Roel*, 3 N.Y.2d 224, 165 N.Y.S.2d 31, 35,  
 195 144 N.E.2d 24, 27 (1957) ("Thus persons or corporations engaging in the practice of Federal law  
 196 have been found violating the statute [that prohibits the unauthorized practice of law.]") (citations  
 197 omitted); see also *In re Peterson*, 163 B.R. 665, 673 (Bankr.1994) ("The regulation of the right to  
 198 practice law generally, unless otherwise prescribed by Congress, is traditionally left to the states.")  
 199 (citations omitted). *United States v. International Bhd. of Teamsters, et al.*, 911 F.Supp. at 754.  
 200 *Erbacci, Cerone, and Moriarty, Ltd. v. United States*, 923 F. Supp. 482 (S.D.N.Y. 1996).

201       16. For the Court to rule in the Defendant's favor, it would have no sound rationale for  
 202 doing so as it would have to bulldoze a New Hampshire State Statute, ignore several Federal Rules  
 203 of Civil Procedure and the Local Rules of this very Court. The Court, in this instance, has no  
 204 discretion, as it had no discretion over Attorney Schwartz when she filed Doc. 3 to the Court as  
 205 Attorney Eck had not yet made any motion for Pro Hac Vice and to date, Attorney Schwartz has  
 206 still not been admitted to this Court. Similarly, in this instance, the Court has no discretion in the  
 207 findings of fact as Attorney Schwartz clearly presented a pleading to the Court on behalf of a  
 208 corporate client, when she was not so authorized to do so. Fairness and the appearance of justice,  
 209 in this instance, should be to follow and adhere to the Laws and rules as written.

210       17. For the reasons stated herein, and in the supporting motion, this memorandum of  
 211 law, and the arguments set forth in [Doc. 14]. this Court must declare Doc. 3 to be prejudicial to

the plaintiff and in violation of N.H. RSA 311:7, and therefore scandalous, non-existent and therefore, must be stricken from the record in its entirety, and therefore an insufficient defense under Fed. R. Civ. P. 12(f).

Respectfully,



/s/ Plaintiff, Anonymously as Sensa Verogna  
SensaVerogna@gmail.com

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this 2nd day of July 2020, the foregoing document was made upon the Defendant, through its attorneys of record to Jonathan M. Eck [jeck@orr-reno.com](mailto:jeck@orr-reno.com) and Julie E. Schwartz, Esq., [JSchwartz@perkinscoie.com](mailto:JSchwartz@perkinscoie.com)